IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 852 of 2000
in
SPECIAL CIVIL APPLICATION No 9413 of 2000
with
LETTERS PATENT APPEAL NO. 853 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9429 of 2000
with
LETTERS PATENT APPEAL NO. 854 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9427 of 2000
with
LETTERS PATENT APPEAL NO. 855 OF 2000
in
SPECIAL CIVIL APPLICATION No. 9416 OF 2000
with
LETTERS PATENT APPEAL NO. 856 of 2000
in
SPECIAL CIVIL APPLICATION NO. 9415 OF 2000
with
LETTERS PATENT APPEAL NO. 857 of 2000
in
SPECIAL CIVIL APPLICATION NO. 9414 OF 2000
with
LETTERS PATENT APPEAL NO. 858 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9476 OF 2000
with
LETTERS PATENT APPEAL NO. 859 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9424 of 2000
with
LETTERS PATENT APPEAL NO. 860 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9421 OF 2000
with
LETTERS PATENT APPEAL NO. 861 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9417 OF 2000
with
LETTERS PATENT APPEAL NO. 862 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9419 OF 2000
with
LETTERS PATENT APPEAL NO. 863 OF 2000
in

SPECIAL CIVIL APPLICATION NO. 9428 OF 2000
with
LETTERS PATENT APPEAL NO. 864 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9422 OF 2000
with
LETTERS PATENT APPEAL NO. 865 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9480 OF 2000
with

LETTERS PATENT APPEAL NO. 866 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9478 OF 2000
with
LETTERS PATENT APPEAL NO. 867 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9423 OF 2000
with
LETTERS PATENT APPEAL NO. 868 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9420 OF 2000
with
LETTERS PATENT APPEAL NO. 869 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9426 OF 2000
with
LETTERS PATENT APPEAL NO. 870 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9418 OF 2000
with
LETTERS PATENT APPEAL NO. 871 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9477 OF 2000
with
LETTERS PATENT APPEAL NO. 872 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9425 OF 2000
with
LETTERS PATENT APPEAL NO. 873 OF 2000
in
SPECIAL CIVIL APPLICATION NO. 9479 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

GUJARAT INDUSTRIAL INVESTMENT CORPORATION LTD.

Versus

BABUBHAI R PATEL

Appearance:

MR MANISH R BHATT for the Appellant

MR TR MISHRA for Respondent No. 1

MR AD OZA, GOVERNMENT PLEADER for Respondents No. 2 to 4.

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

The above-numbered appeals are listed for final disposal before us, though no formal order admitting the appeals is passed. Having regard to the facts of the case, all the appeals are admitted for final disposal.

2. The learned counsel for the appellant seeks permission to delete the respondent no.5 i.e. Labour Court, having its office at Multistoreyed Building, Lal

Darwaja, Ahmedabad, from all the present appeals. The said prayer is granted. The name of the respondent no.5 stands deleted from all the above-numbered appeals.

3. Mr. T.R.Mishra, learned counsel waives service of notice on behalf of respondent no.1; whereas Mr.A.D.Oza, learned Government Pleader waives service of notice on behalf of the respondents no.1 to 4, in each appeal. In view of the joint request made by the learned counsel for the parites, all the appeals are taken-up for final disposal today.

4. All the above-numbered appeals, which are filed under Clause-15 of the Letters Patent, are directed against common C.A.V.Judgment dated October 6, 2000, rendered by the learned Single Judge, in Special Civil Applications No. 9413 to 9429 of 2000 and Special Civil Applications No. 9476 to 9480 of 2000. By the C.A.V.Judgment, the learned Single Judge has rejected the prayer made by the common appellant to quash and set aside order dated July 11, 2000 passed by the Assistant Labour Commissioner referring the dispute raised by the respondent no.1 in each appeal for adjudication,to the Labour Court, Ahmedabad. As common questions of facts and law arise for our consideration in these appeals, we propose to dispose them of by this common judgment.

5. The appellant i.e. The Gujarat Industrial Investment Corporation Ltd. is a Company incorporated under the provisions of the Companies Act, 1956. The entire share holding of the appellant-Corporation is with the Government of Gujarat. The respondent no.1, in each appeal, was an employee of the appellant-Corporation. There was substantial reduction of work in Public Corporations as compared to the available work force and, therefore, in several Corporations as well as Public Institutions, the concept of voluntary retirement scheme was evolved. The Industries and Mines Department of the Government of Gujarat vide resolution dated January 1, 2000 formulated voluntary retirement scheme for the employees of the appellant-Corporation. The Board of Directors of the appellant-Corporation in their meeting held on January 18, 2000 approved the voluntary retirement scheme for its employees. As is evident from the voluntary retirement scheme, the cut off date for receiving the application was January 31, 2000. The respondent no.1 in each appeal gave an application seeking benefits under the Voluntary Retirement Scheme approved by the appellant-Corporation and the appellant-Corporation conveyed its acceptance on different dates. After

acceptance of the applications seeking benefits under the Voluntry Retirement Scheme, the respondent no.1, in each appeal, was relieved from service. Major portion of the amount payable under the Voluntary Retirement Scheme was paid to the concerned respondent on April 7, 2000 and part of it was paid in May, 2000, whereas the balance amount was paid by the first and second week of June, 2000. We may state that while opting for the benefits available under the Voluntary Retirement Scheme, the concerned respondent had also submitted undertaking before the appellant-Corporation, inter-alia, mentioning that he would not withdraw the application after acceptance of the same by the appellant-Corporation. The respondent no.1 in Letters Patent Appeals No. 852, 853, 854, 855, 856, 857, 859, 860, 861, 862, 863, 864, 867, 868, 869, 870 & 872 all of 2000, had not made any grievance before the appellant-Corporation regarding their opting for Voluntary Retirement Scheme, whereas the respondent no.1 in Letters Patent Appeals No. 858/2000, 871/2000, 866/2000, 873/2000 & 865/2000 had addressed letters dated May 15, 2000, April 4, 2000, April 1, 2000, April 4, 2000 and April 3, 2000 respectively, withdrawing from the Voluntary Retirement Scheme and demanded reinstatement with consequential benefits. The applications submitted by each respondent no.1 in the above-numbered five Letters Patent Appeals were not accepted by the appellant-Corporation and the demand made by them to reinstate them in service with benefits was not acceded to by the appellant-Corporation. The respondent no.1 in each appeal, therefore, approached the Conciliation Officer under the provisions of the Industrial Disputes Act, 1947 ("the Act" for short) and made a grievance that as they were compelled to join the Voluntary Retirement Scheme under threats and malafide, their discharge from duties was illegal. On receipt of the application from the concerned respondent, conciliation proceedings were initiated by the Conciliation Officer. On notice being served in the conciliation proceedings, the appellant-Corporation had submitted its reply contending, inter-alia, that the concerned respondent had voluntarily opted for Voluntary Retirement Scheme as well as accepted the amount payable under the said Scheme and as there existed no industrial dispute, the conciliation proceedings should be closed and the demand made by the concerned respondent to refer the dispute to the Labour Court for adjudication should be rejected. It was also pointed out in the reply that the appellant-Corporation being a Government Corporation, there was no personal element involved and no workman was compelled to opt for the benefits

available under the Voluntary Retirement Scheme. The Conciliation Officer had investigated the dispute and made attempts for the purpose of bringing about a settlement of the dispute, but no settlement could be arrived at. As the conciliation proceedings failed, the Conciliation Officer submitted his report to the Government as contemplated by section 12(4) of the Act. On receipt of failure report, the Government was satisfied that there is a case for reference to the Labour Court for adjudication of the dispute raised by the concerned respondent. Therefore, the State Government, by separate orders dated July 11, 2000, has referred the dispute raised by the concerned respondent to the Labour Court, Ahmedabad for adjudication as required by section 10(1)(c) of the Act. Feeling aggrieved by the said orders, the appellant instituted Special Civil Applications No.9413 to 9429 of 2000 and Special Civil Applications No. 9476 to 9480 of 2000. The learned Single Judge has upheld the orders making reference of the dispute raised by the concerned respondent, by common judgment dated October 6, 2000, giving rise to the above-numbered appeals.

6. Mr. M.R.Bhatt, learned counsel for the appellant, contended that the Assistant Labour Commissioner, exercising powers of the State Government under the Act, has not exercised his power of making reference in a reasonable and rational manner, more particularly when the matter had become final and as no dispute was pending at the time when the reference was made, the petitions filed by the appellant-Corporation ought to have been accepted by the learned Single Judge. It was pleaded that the learned Single Judge has failed to consider the sequence of events stated in the petitions, which indicate that in fact no dispute was pending between the appellant-corporation and the concerned respondent and, therefore, the petitions filed by the appellant-Corporation ought to have been allowed by the learned Single Judge. What was claimed was that the Assistant Labour Commissioner could not have formed an opinion that an industrial dispute was existing between the appellant and the concerned respondent and, therefore, the reliefs claimed in the petitions ought to have been granted by the learned Single Judge. It was maintained that the so-called disputes were clearly an afterthought and, therefore, the demand made by the concerned respondent to refer the dispute for adjudication by the Labour Court should not have been accepted by the Assistant Labour Commissioner. It was argued by the learned counsel for the appellant that merely because the conciliation proceedings fail,

reference cannot be made by the competent authority without examining the question whether the demand raised by the workman concerned is frivolous or belated etc. and as the order passed by the competent authority referring the dispute for adjudication by the Labour Court suffers from vice of non-application of mind, the appeals should be accepted. According to the learned counsel for the appellant, though the order making reference is an administrative order, the judicial review of the same is not precluded and as the appellant had established that the order making reference for adjudication of dispute was passed by the Government without taking relevant facts into consideration, the prayers made in the petitions ought to have been granted. Lastly, it was submitted that the order making reference is destructive of industrial peace and defeats the very object as well as purpose of introduction of Voluntary Retirement Scheme and therefore, the judgment impugned in the appeals should be reversed. In support of his submissions, the learned counsel for the appellant placed reliance on the decisions rendered in (i) The Nedungadi Bank Ltd. v. K.P.Madhavankutty and others, 2000(1) SCALE 306, and (ii) National Engineering Industries Ltd. v. State of Rajasthan & others, AIR 2000 SC 469.

7. Mr. T.R.Mishra, learned counsel for the respondent no.1-workman urged that in view of the existence of dispute between the appellant and its employees regarding voluntary option to the voluntary retirement scheme by the concerned respondent, the Government is justified in making reference to the Labour Court and, therefore, the learned Single Judge did not commit any error in upholding the orders by which reference is made by the Government to the Labour Court for adjudication of the dispute. The learned counsel emphasised that acceptance of the amount payable to the concerned respondent under the Voluntary Retirement Scheme would not operate as a bar to prevent him to challenge the termination of his services and, therefore, the order making reference to the Labour Court for adjudication of the dispute raised by the respondent should not be interefered with by the Court in the present group of appeals. According to the learned counsel for the concerned respondent, acceptance of the amount by the concerned respondent under the Voluntary Retirement Scheme should not weigh with the Court at all while considering the validity of order making reference because equities can always be adjusted by the Labour Court if references made are ultimately accepted. What was stressed was that there is nothing

on record to suggest that the appropriate Government had taken into consideration any irrelevant or foreign material while making reference to the Labour Court for adjudication of dispute and the said order which is administrative in character,is not open to scrutiny in a petition filed by the appellant-Corporation under Article 226 of the Constitution. The learned counsel for the concerned respondent vehemently argued that all the relevant factors have been taken into consideration before adjudicating the validity of reference by the learned Single Judge and, therefore, the appeals should be dismissed. In support of his submissions, the learned counsel placed reliance on the decisions rendered in (i) Workmen of Subong Tea Estate v. Subong Tea Estate and another, 1964(1) LLJ 333, and (ii) The Management of Chandra Textiles Private Limited, Coimbatore, Vs. N. Palaniswami and others, 1987(1) LLJ 458.

8. Mr. A.D.Oza, learned Government Pleader, appearing for the State Government, has adopted the arguments advanced by the learned counsel Mr.T.R.Mishra appearing for the respondent no.1 in each appeal and claimed that for the reasons recorded by the learned Single Judge, the appeals should be dismissed.

9. We have taken into consideration the submissions advanced at the Bar as well as the documents forming part of the petitions and the decisions cited at the Bar. From the record of the case, it is evident that the Board of Directors of the appellant-Corporation had introduced the Voluntary Retirement Scheme for its employees pursuant to the Government Circular dated January 1, 2000. In the said scheme, it is specifically provided that an employee of the Corporation, who desires to avail of the benefits of Voluntary Retirement Scheme, has to apply in the prescribed form to the Corporation. The scheme was to remain in force for a period of two months effective from February 1, 2000 and was to be kept open upto March 31, 2000. Only those employees, who were fulfilling the conditions in Office Order No.5, dated February 1, 2000, were entitled to avail of the benefits of the Voluntary Retirement Scheme. It is not in dispute that the respondent No.1 in each appeal had applied to avail of the benefits of the Voluntary Retirement Scheme and that the request made by the concerned respondent was accepted by the appellant-Corporation, as the conditions stipulated in the Office Order No.5, dated February 1, 2000 were satisfied by the concerned respondent. It is also not in dispute that the concerned respondent was paid all

the monetary benefits payable under the Voluntary Retirement Scheme before lodging of complaint before the Conciliation Officer. As observed earlier, the respondent no.1 in 17 Letters Patent Appeals had not made any grievance before the appellant-Corporation that they were forced to opt for Voluntary Retirement Scheme and that they were entitled to continue in service with all benefits. The respondent no.1 in 5 Letters Patent Appeals had made grievance before the appellant-Corporation that because of coercion and duress exercised, they had opted for Voluntary Retirement Scheme, but after raising the said grievance, they had accepted the amount paid to them, which was payable under the Voluntary Retirement Scheme. Under the circumstances, the question arises whether there existed any genuine dispute between the appellant Corporation and the concerned respondent, which could have been referred to the Labour Court for adjudication.

10. The Supreme Court in National Engineering Industries Ltd. (supra) has held that there is no manner of doubt that the High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Labour Court under section 10 of the Act. The question which is raised by the appellant-Corporation in the petitions is a question of jurisdiction of the Labour Court which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial dispute which would clothe the appropriate Government with power to make the reference and the Labour Court to adjudicate it. If there is no industrial dispute in existence or apprehended, the appropriate Government lacks power to make any reference. Therefore, the contention that the order making reference to the Labour Court for adjudication of the dispute is an administrative order and is not subject to scrutiny by the High Court in a petition filed under Article 226 of the Constitution, cannot be accepted.

11. Under sections 10(1) and 12(5) of the Industrial Disputes Act, on making application for reference, the Government has to form an opinion whether the industrial dispute exists or is apprehended and then either to make a reference to the appropriate authority or refuse to make the reference. The appropriate Government is expected to go into the question whether an industrial dispute exists or is apprehended. It would be only a subjective satisfaction on the basis of the material on

record. It is true that being an administrative order, no lis is involved and it is not even necessary for the appropriate Government to issue any notice to the employer or to hear the employer, but before making reference, the appropriate Government must form an opinion that the industrial dispute exists and that the industrial dispute raised is genuine. The record of the petitions establishes that the Government of Gujarat had formulated Voluntary Retirement Scheme and subject to modifications, it was approved by the Board of Directors of the appellant-Company in the meeting of the Board of Directors, pursuant to which Office Order No.5, dated February 1, 2000 was issued. The fact that the respondent no.1 in 17 Letters Patent Appeals, which are referred to above, had not made any grievance before the appellantCorporation regarding their opting for Voluntary Retirement Scheme, is a relevant fact for the purposes of deciding the question whether the dispute sought to be raised is genuine or not. Similarly, the fact that the respondent no.1 in 5 appeals,which are referred to above, had made a grievance about their opting for Voluntary Retirement Scheme, but had subsequently accepted the amount payable to them under the Voluntary Retiremenet Scheme, is also a relevant factor for the purpose of deciding the question whether the dispute raised by them is genuine. It may be stated that the Voluntary Retirement Scheme was introduced because of the weak financial condition of the appellant-Corporation. The appellant being a Government Corporation, there is no personal element involved at all. Therefore, the claim made by the concerned respondent that the concerned respondent was compelled to opt for Voluntary Retirement Scheme could not have been entertained by the appropriate Government. A bare reading of the order making reference to the Labour Court for adjudication of the so-called dispute raised by the concerned respondent makes it evident that the relevant factors were not taken into consideration by the appropriate Government before making reference to the Labour Court. It is relevant to notice that the respondent no.1 in each appeal has already received handsome amount payable under the Scheme which includes sums payable to him on his retirement from service as well as other amounts mentioned in the Scheme and none of the concerned respondent had shown willingness to redeposit the amount received under the Voluntary Retirement Scheme, with the appellant Corporation either before the Conciliation Officer or before the appropriate Government. In fact, acceptance of the amount payable under the Voluntary Retiremenet Scheme by the concerned respondent including five (employees)

respondents, who had raised some grievance, would indicate that they had given-up their objections and that they had accepted the Voluntary Retirement Scheme benefits from the appellant-Corporation willingly. The material on record does not establish that there existed a genuine industrial dispute, which could have been referred to the Labour Court by the appropriate Government for adjudication. As observed earlier, before making complaint to the Conciliation Officer, the respondent no.1 in each appeal, had accepted the amount payable to him under the Voluntary Retirement Scheme and had not shown willingness to refund or redeposit the same with the appellant-Corporation. Thus, the facts establish that as an afterthought the so-called dispute was raised by the concerned respondent, which is not only destructive of industrial peace, but also defeats the very object and purpose for which Voluntary Retirement Scheme has been introduced by the appellant-Corporation. The demand raised for raising industrial dispute was exfacie bad and incompetent and no reasonable person could have accepted the same. Thus, the satisfaction of the appropriate Government is vitiated because, not only there existed no genuine dispute between the parties which could have been referred to the Labour Court for adjudication, but the relevant facts were not taken into consideration at all. It is true that doctrine of accord and satisfaction, and approbation and reprobation may not apply to certain cases and that even after accepting the retrenchment compensation, employee may be justified in raising a dispute, but the facts of the present case indicate that the concerned respondent had not only voluntarily opted for Voluntary Retirement Scheme, but had received the amount payable under the said scheme and appropriated the same for his own purpose. Thus, the matter had become final between the appellant-Corporation and its employees, who had opted for Voluntary Retirement Scheme and as the dispute raised was frivolous, it could not have been referred to Labour Court for adjudication. In fact, in view of the undertaking filed by the concerned respondent before the appellant-Corporation to the effect that after acceptance of the application for Voluntary Retirement Scheme by the Managing Director, he would not have right to withdraw the same, the claim made by the concerned respondent could not have been entertained by any reasonable person. The formation of the requisite opinion that a dispute exists or is apprehended is a preliminary step in the discharge of the function under section 10(1) and is a condition precedent to the exercise of power by the appropriate Government. It is now well established that the

discretion is neither unfettered nor arbitrary, for section 10(1) clearly provides that there must exist an 'industrial dispute' as defined in the Act or such dispute must be apprehended before the Government decides to refer it. The receipt and retention of huge amount by the respondent no.1 in each appeal, paid under the Voluntary Retirement Scheme should have satisfied the appropriate Government that in fact no real dispute existed and it was not expedient to make reference having regard to the facts of the case. The record of the case further shows that 116 employees have opted for Voluntary Retirement Scheme and out of them, only few employees who are 23 in number including those who were holding the post of Deputy Manager had made grievance that they were coerced and pressurised to opt for Voluntary Retirement Scheme. Even in the present proceedings, the respondent no.1 in each appeal has failed to specify as to which officer of the appellant-Corporation had forced or pressurised him to opt for the Scheme and when. As noted earlier, the appellant is a public corporation and as such there is no personal interest involved. Therefore, the appropriate Government could not have readily accepted the tall claim of few employees that they were forced and coerced to opt for the Scheme. The facts of the case show that the complaints filed by few employees of the appropriate Government before the Conciliation Officer after acceptance of all the benefits under the Scheme were malafide and should not have been entertained by the appropriate Government. For the reasons stated above, we are of the view that the opinion of the appropriate Government to the effect that there exists a dispute is vitiated and the order referring the dispute to Labour Court for adjudication is liable to be set aside.

12. The contention that the appellant-Corporation had committed breach of clause (6) of the Circular dated January 1, 2000 by transferring some employees and by promoting other employees to the posts which were held by the concerned respondent and, therefore, the order making reference to the Labour Court should be upheld, is devoid of merits. As observed earlier, after the circular of the Government dated January 1, 2000, the matter was considered by the Board of Directors of the appellant-Corporation in their meeting which was held on January 18, 2000 and the scheme for voluntary retirement from service was approved subject to conditions which were stipulated in the Officer Order No.5, dated February 1, 2000. While approving the Voluntary Scheme Scheme, the appellant-Corporation has not adopted the

whole circular of the Government dated February 1, 2000 and the said scheme was made operative subject to the conditions stipulated therein, which does not include clause (6) of the Circular dated January 1, 2000. On overall view of the matter, we are satisfied that as there existed no industrial dispute and as the so-called dispute raised by the concerned respondent was not genuine, but frivolous and malafide, the same could not have been referred to the Labour Court for adjudication and, therefore, the well-founded relief claimed by the appellant-Corporation ought to have been accepted by the learned Single Judge.

The net result of the above discussion is that the appeals will have to be accepted and the impugned common judgment will have to be reversed.

For the foregoing reasons, all the above-numbered appeals succeed. The common judgment dated October 6, 2000 rendered by the learned Single Judge in Special Civl Applications no. 9413 to 9429 of 2000 and Special Civil Applications No. 9476 to 9480 of 2000 is set aside and quashed. The above numbered Special Civil Applications which were filed by the common appellant, are allowed and the different orders dated July 11, 2000 passed by the appropriate Government referring the so-called dispute raised by the concerned respondent for adjudication by the Labour Court, are hereby set aside and quashed. Rule is made absolute in each petition as indicated above,with no order as to costs. All the appeals are allowed with no order as to costs.

(J.M.Panchal,J.)

(P.B.Majmudar,J.)

(patel)